
State Water Resources Control Board

POST-HEARING ORDER

The State Water Resources Control Board
Administrative Hearings Office
held a Public Hearing on August 13, 2020
on the pending petitions of

the County of Sacramento and the Sacramento County Water Agency

to change water-right Licenses 1062 and 4060 (Applications A001061 and A014494),
which authorize diversions of water from the Sacramento River
in Sacramento County,
and related issues regarding whether these licenses should be revoked.

BACKGROUND

On March 17, 2020, the Administrative Hearings Office (“AHO”) of the State Water Resources Control Board (“State Water Board” or “Board”) issued a Notice of Public Hearing and Pre-Hearing Conference regarding the petitions filed by the County of Sacramento and the Sacramento County Water Agency (jointly referred to in that notice and this order as “Sacramento County”) to change water-right Licenses 1062 and 4060 (Applications A001061 and A014494). As stated in that notice, this hearing also considered whether the State Water Board should revoke these licenses. The applicable statutes, hearing issues and pre-hearing and hearing schedules are described in detail in the March 17 notice and are not repeated here.

On April 7, 2020, the AHO issued a Notice of Updated Service List for this matter. On April 22, the AHO held the pre-hearing conference described in the March 17 notice. On May 20, 2020, the AHO issued a Supplemental Notice of Hearing and Pre-Hearing Conference Order.

On August 13, 2020, the AHO held its public hearing on these petitions by Zoom teleconference. This order follows that hearing.

POST-HEARING CLOSING BRIEFS

As discussed by the hearing officer near the end of the August 13 hearing, in the Sacramento County Hearing Recording file (posted on the AHO-FTP site) between 4:19:30 and 4:26:30, the hearing officer directed the parties to file closing briefs on the following issues. These are the issues stated in the May 20, 2020 Supplemental Notice

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

of Hearing and Pre-Hearing Conference Order, as supplemented by the hearing officer during the August 13 hearing.

- 1) Should Licenses 1062 and 4060 be revoked under Water Code sections 1241 and 1675?
 - a) Were the water rights described in these licenses abandoned?
 - b) Have the licensees ceased to put the water authorized to be diverted and used under the appropriative water rights described in these licenses to useful or beneficial purposes?
 - c) Have the licensees failed to observe any of the terms and conditions of the licenses?
 - d) What were the amounts of historical diversions and use under each of these licenses during any relevant period?
 - e) During the period when no water was diverted or used under these licenses, was there any competing or conflicting claim to the water that could have been diverted and used under these licenses?
 - a. Was there a conflicting claim during any five-year period under the facts presented during this hearing? Please address the criteria for conflicting claims stated in State Water Board Order WR 2016-0001, at pp. 17-21, and the relevant provisions of any other Water Board order that may be applicable here.
 - b. How should the Water Board apply the requirement for a five-year period of non-use and a conflicting claim under the facts presented during this hearing, considering that, during most years, there were times when the Delta was not in balanced conditions, times when the Delta was in balanced conditions but the Term 91 diversion prohibition was not in effect, and times when the Delta was in balanced conditions and the Term 91 diversion prohibition was in effect?
 - f) If the Water Board concludes that Sacramento County's water-right licenses are subject to revocation because of non-use during a five-year period when there was a competing claim, should the Water Board exercise its discretion under Water Code sections 1241 and 1675 to revoke the licenses?
- 2) If Licenses 1062 and 4060 are not revoked, then should Sacramento County's change petitions be granted?
 - a) Would the State Water Board's approval of these petitions result in injury to any other legal user of water?
 - b) Would the State Water Board's approval of these petitions unreasonably affect any fish, wildlife or any other instream beneficial use?
 - c) Would the State Water Board's approval of these petitions be in the public interest?
 - d) Would the State Water Board's approval of these petitions cause the initiation of a new water right?
 - e) What is the status of Sacramento County's actions to comply with the California Environmental Quality Act ("CEQA") for these petitions? May the State Water Board proceed as a CEQA responsible agency to act on these petitions?

- 3) If these change petitions should be granted, what new terms or conditions, if any, should be added to Licenses 1062 and 4060 when the petitions are granted?
 - a. Should the Water Board add new instantaneous and annual diversion limits to these licenses? If so, then what should these limits be?
 - b. Should the Water Board add its Standard Permit Term 91 to these licenses? Please address how *El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937 applies to this issue.

Each closing brief shall be a maximum of 15 pages, double-spaced, in a font size not smaller than 12 points. For citations to hearing testimony, please include citations to the hour, minute and second of the beginning and end of the part of the recording that is being cited.

Each party must upload its closing brief to the AHO-FTP2 site before **September 28, 2020, at 4:00 pm**. Each party also shall mail two paper copies of its closing brief to the AHO on or before this date to:

State Water Resources Control Board
Administrative Hearings Office
P. O. Box 100
Sacramento, CA 95812-0100

Alternatively, a party may send two paper copies of its closing brief to the AHO by overnight delivery, or have the briefs hand-delivered to:

Joe Serna Jr. CalEPA Building
State Water Resources Control Board
Administrative Hearings Office
c/o Water Rights Records Unit
1001 I Street, 2nd Floor, Room 114
Sacramento, CA 95814

(For mailing, overnight delivery or hand-delivery, the party must give the paper copies to the U. S. Postal Service or courier on or before the deadline specified above. The Postal Service's or courier's delivery to the AHO may occur after this deadline.)

Date: September 2, 2020

SIGNATURE ON FILE
Alan B. Lilly, Presiding Hearing Officer

Enclosure:
-Service List

SERVICE LIST

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